IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

JUDGMENT

D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 912 OF 1995

MANGLA SON OF HEMA

VERUS

STATE OF RAJASTHAN & OTHERS

Date of Judgment : 11th October, 2006.

PRESENT

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA

HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

REPORTABLE

Mr. J.L. Purohit, Advoate for the appellant.
Mr. Rameshwar Dave,Dy.Government Advocate,for the respondents

By the Court : (Per Hon'ble Mr. Mohammad Rafiq, J.)

This special appeal is directed against the judgment of learned Single Judge dated 19.10.1995, whereby writ petition filed by the petitioner against the judgments/orders of the Board of Revenue, Ajmer, Revenue Appellate Authority,Jodhpur and Additional Collector, Barmer was dismissed.

In the writ petition, the appellant contended that Tehsildar Shiv in consultation with the Advisory Committee allotted to him agricultural land measuring 23 bighas in Khasra No.835 of Village Shiv Tehsil Shiv by order dated 01.02.1963. He was put in possession of the land in the year 1963 itself and ever since he was in cultivatory possession of the same. The allotment of the land was made under the provisions of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1957 (in short, "the Rules of 1957").

By virtue of the provisions of Sub Rule (1) of Rule 14 of the Rules of 1957, khatedari rights stood conferred upon the petitioner after expiry of period of ten years. Rule 14 (4) of the Rules of 1957 provides for the conditions of resumption of the land, according to which the land could be resumed only when it was not under cultivation in accordance with sub Rule (3) of Rule 14 and it was not properly utilized or it was sublet or transferred in contravention of the provisions of the Tenancy Act or if it was found that the allottee was not a landless person as defined in Clause (iii) of Rule 2. According to the appellant, neither the Tehsildar nor the

State Government took any steps to resume the land in question from the petitioner till he acquired Khatedari rights of the land. Rules of 1957 were later repealed by the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1970 (in short "Rules of 1970"). According to the appellant, Rule 21 of Rules of 1970 saved all those allotments which were made under the Rules of 1957 though there was no provision in the Rules of 1970 for resuming the lands alloted under the Rules of 1957. Tehsildar, Shiv, moved an application before the Additional Collector, Barmer in the year, 1984. This was an application purported to have been made under Sub Rule(4) of Rule 14 of the Rules of 1970 for cancellation of the allotment made in favour of the appellant on the ground that he was not a landless person at the time of allotment. This application was contested by the appellant. In his reply, he contended that he was very much a landless person at the time of allotment made in his favour under the Rules of 1957. It was further contended that Rule 14(4) of the Rules of 1970 could not be invoked for cancellation of the allotment made under the Rules of 1957. Moreover since the appellant has now acquired the khatedari rights over the land in question, allotment made in his favour could not be cancelled after

expiry of 21 years. The Additional Collector, Barmer however by his order dated 12.12.1985 cancelled the allotment on the premise that the appellant had a notional share of 116 bighas and 14 biswas in the ancestral lands held by his father and according to the circular of the Revenue Department dated 28.10.1968, a person in Tehsil, Shiv, of District Barmer was to be considered as a landless person only if he held less than 50 bighas of land. The appellant filed an appeal against the aforesaid order of Additional Collector before the Revenue Appellate Authority,Jodhpur which was also dismissed on 01.12.1990. He thereafter preferred a further appeal before the Board of Revenue for Rajasthan, Ajmer which was also dismissed by order dated 27.06.1995. It was against orders of cancellation of allotment made by the Additional Collector and dismissal of his appeals by the Revenue Appellate Authority as also by the Board of Revenue that the appellant filed the writ petition before this Court.

The writ petition filed by the appellant was dismissed summarily by a learned Single Judge of this Court under the impugned judgment dated 19.10.1995. The learned Single Judge held that the allotment of the land in favour of the appellant was

made considering him to be a landless agriculturist and such allotment was later cancelled when the Additional Collector, Barmer on inquiry found that he was not a landless person and held notional share in the ancestral property to the extent of 116 bighas and 14 biswas. The order of the Additional Collector was confirmed by the Revenue Appellate Authority as also by the Board of Revenue. This was a pure finding of fact recorded by all the three authorities below that the appellant secured allotment by concealing true and correct facts, therefore, this finding of fact was binding on this Court. Feeling aggrieved by the judgment passed by the learned Single Judge, the appellant has preferred this special appeal.

This Court while issuing notice of the appeal and the stay petition, passed an interim stay order dated 13.12.1995 directing that in the meanwhile the appellant shall not be dispossessed from the land in dispute which order was made absolute on 19.05.1997.

We have heard Mr. J.L. Purohit, learned counsel for the appellant and Mr. Rameshwar Dave, learned Deputy Government Advocate for the respondents and also perused the records of the

case.

Mr. J.L. Purohit, learned counsel for the appellant argued that the learned Single Judge as also the authorities below failed to appreciate that the Additional Collector had no jurisdiction to cancel the allotment made under the Rules of 1957 by invoking the Rule 14 (4) of the Rules of 1970. Moreover, allotment in favour of the appellant having been made in the year 1963, he by virtue of Rule 14 (1) of the Rules of 1957 had acquired Khatedari rights in the year 1973. The Additional Collector could not thereafter cancel the allotment made in favour of the appellant by invoking the Rule 14 (4) of the Rules, 1970. Learned counsel for the appellant in this connection relied upon a Division Bench judgment of this Court in Pat Ram and Others Vs. State of Rajasthan and Others (1995 (2) R.B.J. Page 781) in D.B. Civil Writ Petition Bearing No.948 of 1986 decided on 31st August, 1995.

Learned counsel for the appellant argued that according to the ratio of the judgment in Pat Ram (Supra), the powers under Sub Rule (4) of Rule 14 of the Rules of 1970 could have been

exercised by the Additional Collector only before conferment of the khatedari rights. Once when the khatedrari rights were conferred upon the appellant, he was entitled to all those protections which are available to a tenant under the Rajasthan Tenancy Act, 1955(in short "the Act of 1955"). It was argued that the impugned order passed by the Additional Collector, Barmer was without the authority of law and therefore, all subsequent orders passed by the authorities below in affirmation thereof were illegal and the impugned judgment passed by the learned Single Judge is thus liable to be set aside. Learned counsel for the appellant further argued that the allotment in question was made in favour of the appellant way back in the year 1983, whereas the Tehsildar moved an application under rule 14 (4) of the Rules, 1970 before the Additional Collector in the year, 1984 with an inordinate delay of 21 years. The impugned order of cancellation has been passed by the Additional Collector on 12.12.1985. Learned counsel for the appellant again invited attention of the Court to the Division Bench's decision of this Court in Pat Ram (supra), wherein cancellation of allotment after expiry of 16 years was held to be bad in the eye of law. Reliance in particular was placed on that part of the judgment where the Division Bench

held that when the power has been conferred upon an authority to effectuate the purpose then that has to be exercised in a reasonable manner and within a reasonable time.

On merits of the case, learned counsel for the appellant, argued that the appellant was a landless person as per definition given in the Rules of 1957, whereas the Additional Collector while cancelling the allotment has completely ignored the provisions of the Rules of 1957 on this subject and the Revenue Appellant Authority and the Board of Revenue also ignored such provisions as to the meaning of landless persons. The learned Single Judge committed an error in law in affirming the orders passed by the authorities below by holding it to be a finding of fact which in fact was based on wrong interpretation of the provisions of law. It was therefore not a pure finding of fact and the finding of the authorities to the effect that the appellant was not a landless person at the time when the allotment was made in his favour in the year 1963 was required to be based on correct interpretation of the law then available.

Learned counsel for the appellant referred to the order

passed by the Additional Collector and argued that for the purpose of deciding whether or not the appellant was a landless person, a maximum limit of 50 bighas of land as prescribed in the circular of the Revenue Department dated 28.10.1968 has been made basis, whereas the schedule appended to the Rajasthan Tenancy (Government) Rules, 1955(in short "the Rules of 1955"), which was in force at the time of allotment has prescribed such limit to be of 125 bighas. He therefore argued that even if it is assumed, though denied, that the appellant had a notional share in his ancestral property to the extent of 116 bighas and 14 biswas, this still fell short of 125 bighas. The appellant was thus very much a landless person when allotment was made. It was argued that the judgment passed by the learned Single Judge be set aside and the writ petition filed by the appellant be allowed in terms of the prayers contained therein.

On the other hand, Mr. Rameshwar Dave, learned Deputy Government Advocate for the respondents, supported the judgments passed by all the authorities below as also the judgment of the learned Single Judge. He argued that none of the orders

passed by the authorities below suffer from any error apparent on the face of the record. Whether or not the appellant was a landless person, was essentially a question of fact and therefore the learned Single Judge rightly refused to interfere in the matter. He argued that the allotment made in favour of the appellant was based on concealment of the material fact that he already had a notional share of 116 bighas and 14 biswas in the ancestral property of his father and when this fact came to notice of the Tehsildar, Shiv, he immediately applied for cancellation of allotment.

Learned Deputy Government Advocate relied upon Rule 14 (4) of the Rules of 1970 which provides that the Collector shall have the power to cancel any allotment made by the Sub Divisional Officer or the Tehsildar under the Rules, 1957 repealed by Rule 21 of the Rules, 1970 either suo motu or on the application of any person, in case the allotment has been secured through fraud or misrepresentation or has been made against the Rules or in case the allottee has committed breach of any of the conditions of the allotment. Allotment in the present case having been secured on misrepresentation of facts about the status of the appellant, was

rightly cancelled by the Additional Collector. Mere fact that the appellant acquired khatedari rights on expiry of 10 years from the date of allotment, would not affect his powers to cancel such allotment, if he was satisfied that such allotment was secured by concealing material facts.

Learned Deputy Government Advocate in this connection relied upon the judgment of this Court in Sohan Kanwar Vs. Board of Revenue & Others, reported in 2002 (1) W.L.C. Page 415. It was argued that mere delay in seeking cancellation of allotment by itself would not denude the authorities of their powers to make cancellation if they are otherwise satisfied about the necessity of doing so. In the present case, Tehsildar immediately on coming to know of misrepresentation and fraud committed by the appellant moved an application and thus the delay, if at all there was one, would not be fatal. It was therefore argued that the judgment passed by the learned Single Judge does not suffer from any legal infirmity and therefore, the present appeal be dismissed.

We have bestowed our earnest consideration to the rival

arguments advanced by the learned counsel and perused the record.

When a particular provision of law, viz-the Act or the Rules, is required to be interpreted for recording a finding on a question of fact, such a finding cannot be described as a pure finding of fact. It would be either a finding on a question of law or at best a finding on mixed question of law and fact, depending on the facts of the case. In the instant case, the question whether the appellant was a landless person and the related question whether he secured allotment on the strength of concealment or misrepresentation, would have to be determined on appreciation of position of law as to meaning of "landless person" obtaining on the date of such allotment. Keeping this in mind, we have to examine the basic order of cancellation as also subsequent orders passed in affirmation thereof. The first order of cancellation of allotment was made by the Additional Collector, Barmer on 12.12.1985. A careful reading of this order reveals that the Additional Collector recorded a finding that the appellant as on the date of allotment in the year 1963 had a notional share of 116 bighas and 14 biswas of land in

ancestral property of his father. He thus concluded that the appellant was not a landless person and in recording such a finding he relied upon the Revenue Department's circular bearing No.F(37) Revenue-3-55 dated 08.10.1968, according to which only such persons in Tehsil Shiv District Barmer, who held less than 50 bighas of land were considered as landless persons. This order reveals that the argument advanced on behalf of the appellant about such maximum limit being 125 bighas with reference to schedule appended to the Rules of 1955 was duly taken note of but the Additional Collector omitted to give any finding on correctness of this argument. No discussion was made as to how the maximum limit prescribed in the schedule appended to the Rules of 1955 in force when the allotment in question was made on 01.02.1963, would not be relevant and at the same time no discussion whatsoever was made also on the question as to how the prescription of maximum limit of 50 bighas for landless persons made in the Revenue Department's circular issued on 18.10.1967 could form the basis to hold the appellant as a landless person and to further hold that he secured such allotment on the basis of concealment of facts and by fraud.

We may in this connection refer to the definition of a landless person given in Rule 2 (iii) of the Rules of 1957, which for the facility of reference is reproduced as under:

> "Landless person" shall mean a bonafide agriculturist by profession who cultivates or can reasonably be expected to cultivate the land personally but who does not hold any land either in his own name or in the name of any member of his joint family; or who holds an area which is less than the minimum area prescribed for purpose of Section 53 of the Tenancy Act".

The aforesaid definition provides that a person who holds an area which is less than minimum area prescribed for the purpose of Section 53 of the Tenancy Act would be a landless person. The minimum area for the purpose of Section 53 (i) of the Tenancy Act has been defined in Rule 24-A of the Rules of 1955 as they stood in the year, 1963, which is reproduced as under:

> "The minimum areas for the purposes of Sub Section (1) of Section 53 of the Act shall be 1/5th of the minimum areas fixed for each district or part of a district for purposes of clause (a) of Section 180 and given in rule 66 and the schedule thereto".

Rule 66 of the Rules of 1955 prescribed the minimum area for the purpose of Clause (a) of Section 180 of the Act of 1955 and as per the schedule appended to the said rules, the minimum area for Village Shiv District Barmer has been prescribed as 250 acre which when converted into bighas upon multiplication by 2.5, comes to 625 bighas. Rule 24-A (supra) provides that the minimum area for the purpose of sub Section (1) of Section 53 shall be 1/5th of the minimum area fixed for each district or part of district for the purpose of Clause (a) of Section 180 as given in Rule 66 and schedule thereto and therefore 625 bighas divided by 1/5th would come to 125 bighas as the maximum area for being a landless person.

Although, we have carefully examined the ratio of the judgment in the case of Pat Ram but we entertain serious doubts about correctness of the law laid down that just because khatedari rights have come to accrue to the allottees on expiry of 10 years, cancellation of allotment cannot be made under the provisions of Rule 14 (4) of the Rules, 1970. We entertain such doubt because if

the Collector is satisfied that the original allotment was secured on the basis of fraud or misrepresentation of facts, then that question would go to the root of the case. In a given case, a situation may arise where someone claiming himself to be a landless person is able to secure the allotment under Rule of 1970 even though he may be having a big chunk of land many times larger in size than the maximum limit prescribed for being a landless person. The Collector in that case cannot be taken to have divested of his authority under Sub Rule (4) of Rule 14 of the Rules, 1970, just because khatedari stood conferred upon such person after expiry of 10 years by virtue of sub rule (1) of Rule 14 of the Rules of 1970. Rule 14 has given a composite scheme and interpretation of sub rule (1) cannot be made in isolation of sub Rule (4) when both of them form integral part of the same scheme of the rules and in fact, the same rule. Sub Rule (1) of Rule 14 cannot be therefore interpreted to the exclusion of other sub Rules specially sub rule (4) of the same rule. We have to therefore make a harmonies interpretation of the said two sub rules keeping in view the over all purpose with which the Rules of 1970 have been framed i.e to make allotment of agricultural land to landless as a measure of land and

economic reforms.

In Manik Lal Majumdar & Ors. vs. Gouranga Chandra Dey & Ors.reported in (2005) 2 SCC p.400, a somewhat similar controversy was raised before the Hon'ble Supreme Court as to interpretation of Sections 12, 13 and 20 of the Tripura Buildings (Lease and Rent Control) Act, 1975. The Hon'ble Supreme Court made the following observations in para 8 on this aspect of the matter:-

> "It is a well-settled principle that the intention of the legislature must be found by reading the statute as a whole and in order to ascertain the meaning of a clause in a statute, the court must look at the whole statute, at what precedes and what succeeds and not merely the clause itself. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed, but to the entire statute; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs."

In State of Gujarat vs. Salimbhai Abdulgaffar Shaikh & Ors. Reported in (2003) 8 S.C.C. p.50 again their Lordships of the Hon'ble Supreme Court while making interpretation of various provisions of Prevention of Terrorism Act, 2002 made the following

observations in para 12 of the judgment:-

> "It is a well-settled principle that the intention of the legislature must be found by reading the statue as a whole. Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute. It is also the duty of the court to find out the true intention of the legislature and to ascertain the purpose of the statute and give full meaning to the same. The different provisions in the statute should not be interpreted in the abstract but should be construed keeping in mind the whole enactment and the dominant purpose that it may express."

We also cannot countenance the argument advanced on behalf of the appellant that the Rules 14 (4) of the Rules of 1970 could not be applied for cancelling the allotment made under the Rules of 1957. In fact such an argument proceed on ignorance of the very language of sub Rule (4) of Rule 14 where it is provided that the Collector shall have a power to cancel any allotment made by a Sub Divisional Officer or a Tehsildar under Rules repealed by the Rules of 21 of the Rules, 1970. It was Rule 21 of Rules, 1970 which repealed the Rules of 1957 but saved the orders made and actions taken thereunder with corresponding obligations and liabilities. Moreover, it is significant to note that Rule 14 in the Rules

of 1970 is in para materia with Rule 14 of the Rules of 1957.

Adverting now to the argument advanced by the learned Deputy Government Advocate that the allotment was secured by the appellant on the strength of fraud or misrepresentation and further that the question whether or not the appellant was a landless person was a question of fact, therefore, no interference is called for with the orders passed by the learned Single Judge as also the authorities below. We may hasten to state that in view of what we have discussed above, it should be now clear that the very finding recorded by the Additional Collector that the appellant was not a landless person was based on misconstruction and misapplication of the relevant law on the subject. In doing so, the Additional Collector based his findings on the circular of the Revenue Department but completely ignored the schedule appended to the Rules of 1955, which was then available on the statute book providing for a maximum limit of 125 bighas for being a landless person in Tehsil Shiv of District Barmer. This, in our view, constitutes an error apparent on the face of record justifying interference by this Court in its supervisory jurisdiction under Article 227 of the Constitution of

India.

In the ordinary course, we would have considered it appropriate to remand the matter back to the Additional Collector, Barmer but in the facts of the present case when we upon scrutiny of cancellation order have found the sole premise on which such order was based as unsustainable in law, remand of the matter would be a mere ritual leaving practically nothing for him to decide. We have therefore decided to give a quietus to this 22 years old litigation by setting aside orders passed by all the authorities below and that of the learned Single Judge.

In view of what has been discussed above, the present special appeal deserves to be allowed and the same is accordingly allowed. Orders/judgments passed by the Additional Collector, Barmer dated 12.12.1985, the Revenue Appellate Authority, Jodhpur dated 01.12.1090 and the Board of Revenue, Ajmer dated 27.06.1995 are quashed and set aside and consequently, the judgment passed by the learned Single Judge dated 19.10.1995 is also set aside. Resultantly, the writ petition stands allowed. In the

facts of the case, we leave the parties to bear their own costs.

(MOHAMMAD RAFIQ),J. **(S.N.JHA),C.J.**

Aditya/-